

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

ROBERT SMITH Jr.,
Plaintiff,
v.
R. ROBERTS, et al.,
Defendants.

Case No. C06-5635RJB

**REPORT AND
RECOMMENDATION TO
DENY PLAINTIFF'S
MOTION FOR DEFAULT**

NOTED FOR:

This civil rights action has been referred to the undersigned Magistrate Judge pursuant to Title 28 U.S.C. § 636(b)(1)(B). Before the court is plaintiff's motion /notice of default (Dkt. # 25). Defendants have responded and show they are not in default (Dkt # 26). Accordingly, the motion should be **DENIED**.

FACTS

This action was commenced on October 23, 2006, when plaintiff filed a motion to proceed *in forma pauperis* and a proposed complaint (Dkt. # 1). Plaintiff sought to amend his original complaint and was given until February 23, 2007 to do so (Dkt. # 13). Plaintiff was granted *in forma pauperis* status and on February 27, 2007, the court ordered the United States Marshals Service to attempt service by mail (Dkt # 21).

Defendant R. Roberts accepted service on March 8, 2007 (Dkt # 23). A notice of appearance was

1 entered on April 4, 2007 by the Attorney General's Office of the State of Washington (Dkt. # 24).

2 Discussion

3 As defendant accepted service of March 8, 2007, he has sixty days, until approximately May 7,
4 2007, to file an answer or rule 12 motion. Defendants are not in default and plaintiff is mistaken as to
5 when the sixty-day time frame began to run. The motion for default should be **DENIED**. A proposed
6 order accompanies this Report and Recommendation. Pursuant to 28 U.S.C. § 636(b)(1) and Rule 72(b)
7 of the Federal Rules of Civil Procedure, the parties shall have ten (10) days from service of this Report to
8 file written objections. *See also* Fed. R. Civ. P. 6. Failure to file objections will result in a waiver of those
9 objections for purposes of appeal. Thomas v. Arn, 474 U.S. 140 (1985). Accommodating the time limit
10 imposed by Rule 72(b), the clerk is directed to set the matter for consideration on **May 25, 2007**, as noted
11 in the caption.

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14 DATED this 20 day of April, 2007.

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16 /S/ J. Kelley Arnold
17 J. Kelley Arnold
18 United States Magistrate Judge
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